

complaint

Mrs P has complained about the way Capital One (Europe) plc ("Capital One") has used the compensation it agreed to pay her after she complained about the mis-sale of payment protection insurance ("PPI").

background

Mrs P took out a credit card with Capital One and also took out PPI alongside it to protect her repayments. Mrs P entered into a protected trust deed ("PTD") as she wasn't able to pay all of her debts when they fell due. She was discharged from the PTD in June 2006, so she couldn't be chased by her creditors for the debts she listed when she entered into the PTD.

Mrs P complained to Capital One that she'd been mis-sold PPI and in October 2012 it made an offer to settle her complaint. It offered her total compensation of £386.73, but it said it would "offset any refund against any outstanding defaulted balances". Mrs P wrote back to Capital One to say she accepted the amount, but she didn't agree to the compensation being offset and she wanted to be paid directly.

Our adjudicator looked at the complaint and thought it was fair for Capital One to use the compensation to reduce Mrs P's debt. But Mrs P has argued that Capital One can't do this as she's come out of her PTD, so her debts have been written off. She's also now asked that the amount of the offer be checked, so the complaint has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As Capital One has agreed to work out compensation in the same way as if I'd found it had mis-sold PPI, so I don't need to look at how PPI came to be sold to Mrs P. But I do need to consider whether Capital One's offer is fair.

I think the offer is fair and I'd like to explain why.

We expect that when a business has mis-sold PPI, it puts things right by, as far as is possible, putting the consumer in the position they would've been in now if they hadn't taken out PPI.

When we look at a credit card we expect a business to remove from the account the charges for PPI, any interest paid on the charges and any further charges caused by the PPI. If, when this is taken off, someone paid more than they needed to clear their balance we expect a business to pay interest on the extra amount at the rate of 8% a year simple interest.

Capital One made Mrs P an offer. It said she'd been charged £332.18 in PPI premiums and had been charged £54.55 interest on those premiums. It said that Mrs P didn't ever pay back enough on her account so that it needed to add 8% simple interest. I've looked at the breakdown that Capital One has sent us and I think it's worked out compensation in the same way I'd expect it to if I'd found it had mis-sold PPI.

When Mrs P entered into a PTD, the debts she owed weren't cancelled. And they weren't cancelled when she was discharged in 2006 – but by law she couldn't be chased for the debts. The debt she has with Capital One still exists and some of it related to PPI premiums (and interest) that Mrs P never paid. So I think it's fair for Capital One to use the compensation to reduce the debt, otherwise she'd be getting a refund of PPI premiums (and interest) she didn't actually pay in the first place.

I've also thought about when Mrs P had PPI – it was before she entered into the PTD. But at that point she shouldn't have had PPI on her credit card, so she would've owed Capital One something, but it would've been less. Capital One has to put Mrs P into the position she would've been in if she didn't have PPI. Having looked at what she owed her various creditors, I think she would've still entered into a PTD as her debt with Capital One was only a small proportion of her overall debt. So she would've entered into the arrangement with a smaller debt and, at the end, Capital One wouldn't have been able to chase this smaller debt. This is the position Capital One has put Mrs P in, so I think what it's done is fair.

my final decision

For the reasons set out above I think Capital One (Europe) plc's offer was fair and I don't direct it does anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 26 October 2015.

Mark Hutchings
ombudsman